



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 18 2005

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED

Mike D. McDaniel **Certified Mail No. 7003 1680 0004 9923 1933**
Secretary
Louisiana Department of Environmental Quality
P.O. Box 4302
Baton Rouge, Louisiana 70821-4302

John Suttles, Esquire **Certified Mail No. 7003 1680 0004 9923 1940**
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118

Re: Dismissal of Title VI Administrative Complaints, EPA File Nos. 3R-96-R6, 4R-97-R6, and 7R-98-R6

Dear Secretary McDaniel and Mr. Suttles:

In 1996, 1997, and 1998, the three above referenced administrative complaints were filed with the U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR). The complaints alleged various violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and EPA's implementing regulations at 40 C.F.R. Part 7 (Part 7) by the Louisiana Department of Environmental Quality (LDEQ) in its environmental permitting, enforcement, and public participation programs. The complaints raised some common concerns. In particular, all three complaints alleged denial of public participation in the permitting process.

On January 18, 2005, OCR and LDEQ entered into a settlement agreement (copy enclosed) regarding the three Title VI administrative complaints. This letter constitutes OCR's dismissal of the complaints pursuant to the settlement agreement.

Legal Background for Complaints

Title VI prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance. EPA's Part 7 regulations implement Title VI. The regulations prohibit intentional discrimination and discriminatory effects that occur in the administration of programs or activities that receive EPA funds. Facially neutral policies or practices that result in discriminatory effects violate the regulations, unless the recipient can provide justification and there are no less discriminatory alternatives. LDEQ is a recipient of EPA funds and therefore is subject to the requirements of Title VI and Part 7.

Complaints

3R-96-R6 (filed by the Oakville Community Action Group, now represented by the Tulane Environmental Law Clinic) alleged the following:

1. *Adverse disparate impacts from denial of public participation:* In 1987, LDEQ issued to Industrial Pipe, Inc. (IP) an air permit for construction and operation of a pit burner. A condition of the permit was that IP would commence construction of the pit burner or enter into construction agreements within two years. A number of years passed and IP did not install the pit burner. LDEQ regularly issued the permit renewals, however, even after the permit expired, and allowed IP to modify the expired permit three times after 1992 without opening the permitting process to participation by the Oakville community.
2. *Adverse disparate impacts from IP facility operation:* LDEQ issuance of certain air and solid waste permits to IP resulted in adverse impacts on the African-American Oakville community, such as odors, toxic fumes, underground fires, barge fires, pests, dust, traffic problems, and home damage.
3. *Adverse disparate impacts from failure to enforce and to respond adequately to citizen complaints:* Failure to enforce a 200-foot buffer zone requirement and to correct other violations, and to respond adequately to complaints about facility operation, also resulted in adverse disparate impacts on the Oakville community.

4R-97-R6 (filed by Tulane Environmental Law Clinic on behalf of the St. James Citizens for Jobs & the Environment; later amended to add Louisiana Environmental Action Network, St. John Citizens for Environmental Justice, Ascension Parish Residents Against Toxic Pollution, Gulf Coast Tenants Association, River Area Planning Group, and Southern Christian Leadership Conference) alleged the following:

Adverse disparate impacts from denial of public participation: LDEQ did not comply with its permitting and public participation programs, in the application of

Shintech Inc. for permits to construct and operate a polyvinyl chloride facility in the significantly African-American St. James Parish. This had an adverse disparate impact on the citizens of the parish. [Subsequent to the filing of the Title VI complaint, Shintech Inc. decided not to build its facility in St. James Parish, Louisiana, but in Addis, Louisiana. Accordingly, only the public participation allegation remained.]

7R-98-R6 (filed by Tulane Environmental Law Clinic on behalf of the Northern Baton Rouge Environmental Association, the Steering Committee to Stop Natural Resources Recovery, Inc. (NRRRI), and the Louisiana Environmental Action Network) alleged the following:

1. *Adverse disparate impacts from denial of public participation:* LDEQ issued permits to NRRRI to construct and operate a construction debris landfill in the African-American community of Alsen. It did not provide notice or public participation. It accepted NRRRI comments after the close of the comment period failed to respond to citizen comments; disrupted community meetings; and treated African-American citizens poorly.
2. *Adverse disparate impacts from failure to take cumulative impacts into consideration in permitting:* In the Alsen area and statewide, complainants alleged that LDEQ had failed to take cumulative effects from multiple sources and pollutants into account during the permitting process. Complainants were concerned that this would result in adverse disparate impacts on the Alsen community when the facility was constructed.
3. *Adverse disparate impacts from failure to enforce and to respond adequately to citizen complaints:* Complainants alleged that LDEQ had record of failing to enforce generally, and of failing to respond adequately to complaints about facilities operations. Complainants were concerned that this would result in adverse disparate impacts on the Alsen community when the facility was constructed.

Settlement of Complaints

In response to these three complaints accepted for investigation, EPA commenced an investigation of LDEQ's compliance with Title VI and Part 7. In 2004, EPA and LDEQ began negotiation to settle all three complaints. Both agencies considered the complaint allegations, particularly the complaints' common allegation of denial of public participation in the permitting process.

During negotiations, LDEQ and IP reached an independent resolution regarding appealed conditions in the solid waste permits for the Type III separation facility in Oakville. A number of the issues addressed in the LDEQ-IP permit appeal resolution previously were identified as concerns in the Oakville Title VI administrative complaint. Therefore, although EPA is not a party

to the permit appeal resolution, the terms of the permits reissued with revised conditions sufficiently address some of the concerns raised in the Title VI complaint. In addition, the remaining concerns raised in the complaint and not addressed in the permit appeal resolution have otherwise been resolved.

Prior to the EPA-LDEQ negotiations, LDEQ had taken steps regarding the complainants' overarching concern with public participation in the permitting process. During the last decade, Louisiana has increased its ability to address Title VI issues through legislative and executive actions, and through LDEQ policies and initiatives. LDEQ also has created an environmental justice outreach program. This program has enhanced citizen participation in low income and minority areas adjacent to industry, and has established Environmental Justice Panels, now known as Community-Industry Panels.

The EPA-LDEQ settlement agreement details the improvements that LDEQ has made through the LDEQ-IP permit appeal resolution and its own initiatives. The EPA-LDEQ agreement also sets forth LDEQ's specific commitments to, among other things: improve its public participation program further within one, two, and three years; enter an agreement with EPA to share information and collaborate regarding the further study and consideration of cumulative impacts; train LDEQ officials and employees to better ensure stakeholder involvement, by using appropriate communication techniques and by creating effective forums for dialogue; provide employees who have contact with the public in diversity and/or sensitivity training; and establish standard operating procedures for investigating environmental complaints.

Conclusion

EPA has not found a violation of Title VI or Part 7. It has made this determination upon review of materials submitted by the complainants and LDEQ and information gathered by EPA, in consideration of the specific commitments LDEQ made in the voluntary EPA-LDEQ settlement agreement, and according to controlling legal authority. Accordingly, EPA hereby dismisses the complaints.

Title VI provides all persons with the right to file complaints against recipients of federal financial assistance. No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against any individual or group because of action taken, or participation in any action taken, to secure rights protected under Title VI and 40 C.F.R. § 7.100.

Under the Freedom of Information Act, EPA may be required to release this document and related records upon request. In that event of such an event, EPA will seek to protect from release, to the extent permitted by law, any personal information, which that, if released, could constitute an unwarranted invasion of the privacy of any individual.

In closing, I would like to thank and to acknowledge the assistance of Jackie Marve and Herman Robinson of LDEQ for their cooperation and helpfulness during the settlement process, as well as John Suttles of the Tulane Environmental Law Clinic. If you have any questions or would like to discuss this agreement further, please feel free to call Yasmin Yorker, Assistant Director of OCR's External Compliance Program at (202) 343-9682.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Higginbotham", with a long horizontal flourish extending to the right.

Karen D. Higginbotham
Director

Attachment

cc: Stephen G. Pressman
Associate General Counsel
Civil Rights Law Office (2399A)

Barry Hill
Director
Office of Environmental Justice (2201A)

Lawrence Starfield
Deputy Regional Administrator
EPA Region 6 (6RA)